

Message Text

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TO SECSTATE WASHDC IMMEDIATE 5496

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E.O. 11652: N/A

TAGS: CASC, BL

SUBJECT: US CITIZEN PRISONERS: IS DEPORTATION LEGAL?

REF: STATE 116960

1. EMBASSY LAWYERS QUINTANILLA AND TOVAR HAVE REVIEWED DEPORTATION AS AN OPTION IN OBTAINING THE RELEASE OF AMERICAN PRISONERS IN BOLIVIA. THEY SAY THAT ALL OLD LAWS, INCLUDING THE ONE FOR 1939, ARE NO LONGER APPLICABLE BECAUSE THEY HAVE EITHER BEEN ABROGATED OR RENDERED INAPPLICABLE BY A GENERAL STATEMENT IN THE NEW LAW. THEY NOTE THAT DEPORTATION IS AN EXECUTIVE OPTION WHILE A PERSON IS IN POLICY CUSTODY AND BEFORE HE IS TURNED OVER TO THE COURTS. ONCE IN JUDICIAL PROCESS IT HAS TO BE A JUDICIAL SENTENCE. THEY NOTE THAT THERE ARE PROVISIONS IN THE LAW WHICH WOULD EXEMPT FROM TRIAL PERSONS MENTALLY INCOMPETENT IN GENERAL OR WHO CAN BE SHOWN TO HAVE HAD NO COMPETENCY AT THE TIME OF THE CRIME. THEY ARE SEEKING TO USE THE CONDITION OF DRUG ADDICT TO HELP IN THE JUDICIAL SENTENCING OF WILLIAM RODENBERG. THEY POINT OUT THAT THEY SEE NO OTHER PRISONERS WHO COULD BE BENEFITTED BY A DRUG ADDICT CLAIM AND GREAT COMPLICATIONS WHEREIN A PERSON HAS BEEN INVOLVED WITH EXTREMELY LARGE AMOUNTS OF NARCOTICS.

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2. THE EMBASSY ADVISERS WISH TO POINT OUT THAT THEY UNDERSTAND FULLY WHY THE PARENTS ARE SEIZING ON SUGGESTIONS FOR GENERAL RELEASE OF PRISONERS BUT THEY SEE NO SUCH OPTION AVAILABLE TO US. THEY POINT OUT THAT EACH CASE IS DIFFERENT AND IN EACH CASE THERE IS A DIFFERENT ACCUSATION, WHICH MEANS THAT EACH CASE MUST HAVE ITS OWN UNIQUE DEFENSE. THEY SAY THAT DELAYS IN THE PROCEEDINGS ARE NOT ALL THE FAULT OF THE BOLIVIAN

JUDICIARY. THEY ADD THAT DEFENSE ATTORNEYS HAVE FREQUENTLY HELD OFF ASKING FOR HEARINGS OR ARRANGING TO HAVE THEM POSTPONED BECAUSE THEY WERE WAITING ADDITIONAL INFORMATION FROM THE US TO HELP THEIR CLIENTS. THEY REPEATED THAT MANY OF THE PRISONERS AND THEIR ATTORNEYS CONSCIOUSLY AND DELIBERATELY HELD OFF PRESSING THEIR CASES IN 1976 AWAITING THE ENACTMENT OF THE NEW DRUG LAW. THEY ALSO HAVE REPEATED THAT THERE IS A BONA FIDE CONGESTION OF WORK IN THE COURTS AND THAT IN ADDITION TO THE EXISTING CASES THERE ARE CUMBERSOME AND ANTIQUATED ADMINISTRATIVE PROCEDURES WHICH THEY HOPE IN THE FUTURE CAN BE REMEDIED. IN THIS CONNECTION, THEY ARE HELPING US PRESS FOR ELIMINATION OF THE REQUIREMENT FOR AN AUTOMATIC REVIEW OF EACH SENTENCE BY THE SUPREME COURT. THEY WISH TO IMPROVE THE PROCEDURES OF THE POLICE IN HANDLING EVIDENCE OF AN ALLEGED VIOLATION, SUCH AS THE ACTUAL DRUG INVOLVED. THEY STATE THAT THERE ARE A FEW CASES OF JUDICIAL DELAYS BUT THEY ALSO POINT OUT THAT THERE IS SOME BASIS IN EVERY CASE FOR INDIVIDUALS TO BE PROCESSED BY THE COURTS. THEY HAVE POINTED OUT TO ME THAT THE FOUR RESIDENTS OF THE STATE OF WASHINGTON WHO HAVE BEEN SENTENCED, APPEAR UNWILLING TO PAY DEFENSE ATTORNEYS ADDITIONAL FEES AND AS A CONSEQUENCE THE DOCUMENTS FOR REVIEW IN THE SUPERIOR COURT ARE NOT MOVING AS RAPIDLY AS THEY SHOULD.

3. DOCTORS QUINTANILLA AND TOVAR RECOMMEND THAT THE US FOLLOW WHAT THEY CONSIDER TO BE THE ONLY STRATEGY AVAILABLE, WHICH IS TO CONTINUE TO PRESS ALL ALONG THE LINE FOR ACCELERATION OF JUDICIAL PROCEDURES AND FOR REFORMS IN THE PROCESSING TO HELP REMOVE OBSTACLES. THEY SAY THE PARTICIPATION OF THE LIMITED OFFICIAL USE

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CONSULS, THEMSELVES, AND TRANSLATORS IS ESSENTIAL AND SHOULD BE SUSTAINED AT THE PRESENT LEVEL. THEY FEEL THAT IT WOULD BE USEFUL IF WASHINGTON WERE TO HAVE A CASE BY CASE REVIEW WITH THE INDIVIDUAL PARENTS, DISCUSSING THE ACCUSATIONS AND THE STATUS OF THE DEFENSE RATHER THAN HAVE THE REPEATED GENERAL PROPOSITIONS PUT FORTH AND DISCUSSED ABOUT RELEASE AND DEPORTATION OF ALL THE PRISONERS. THEY ALSO SAY THAT THE NEWER CASES INVOLVE LARGE AMOUNTS OF DRUGS AND THAT SOME OF THE OLDER CASES AS WELL MAY RESULT IN LONG SENTENCES.

4. I DID NOT DISCUSS WITH THE LAWYERS THE PREPARATION OF AN OPTIONS PAPER IN THE DEPARTMENT BUT WAS IMPRESSED BY THE LAWYERS' PERCEPTION THAT THE REQUEST FOR AN ANALYSIS ON DEPORTATION INDICATED THE GROPING FOR AN ALTERNATIVE STRATEGY TO DEAL WITH THIS PROBLEM. IN SUM, THEIR RECOMMENDATION IS THAT WE KEEP PRESSING ALONG THE LINES THAT WE HAVE PRESENTLY SET OUT.

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